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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,525	02/05/2002	Karla Robotti	10011206	2898

22878 7590 06/16/2008

AGILENT TECHNOLOGIES INC.
INTELLECTUAL PROPERTY ADMINISTRATION, LEGAL DEPT.
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EXAMINER

NGUYEN, QUANG

ART UNIT	PAPER NUMBER
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1633

NOTIFICATION DATE	DELIVERY MODE
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06/16/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/072,525

Applicant(s)

ROBOTTI, KARLA

Examiner

QUANG NGUYEN, Ph.D.

Art Unit

1633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 2 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3, 9, 15-21, 24, 26-42, 44-56, 58 and 59.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/QUANG NGUYEN, Ph.D./
Primary Examiner, Art Unit 1633

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are respectfully found not persuasive for overcoming the rejections of record.

1. It is noted that on pages 10-12 of the Ater-Final amendment, Applicant simply presented essentially the same arguments for which they were already addressed in the Final office action mailed on 3/18/08 (at least pages 9-12). With respect to the Avnir reference (US 6,159,453), Applicant further argues that there is no reason whatsoever for one skilled in the art of microanalysis to turn to a lotion for protecting skin, hair and nails for the ravages of UV radiation in an effort to address shortcomings and deficiencies of known microanalytical devices and methods at the time of Applicant's invention.

Once again, it appears that Applicant only considers the teachings of Avnir reference (US 6,159,453) in total isolation from the teachings of other cited references. The Avnir reference clearly indicated that at the time of Applicant's invention, doped sol-gel particulates or powder in any shape with 0.01-100 microns in diameters were successfully made and used. In the overall context of the rejection of record, it would have been obvious for an ordinary skilled artisan to make and use doped sol-gel particulates or powder of 0.01-100 microns in forming a micro-analytical device for use in sensor, waveguide and integrated optics applications and/or analysis of small and/or macromolecular and/or other solutes in the liquid phase because Dunn et al already taught that encapsulated biological material prepared by the sol-gel process is easier to minaturize and less cumbersome for use in analytical devices of very high sensitivity; biological material embedded in a sol gel used as a component of micron-scale devices was also disclosed by Lochhead et al. Furthermore, Avnir (US 5,300,564) already taught that crushed powder doped sol-gel glasses can be used as support for enzymatic column chromatography.

2. Applicant's representative further argues that he is unaware of any standard that relies on a totality of the teachings' standard.

Please note that the rejections of record for determining obvious under 35 USC 103(a) were based on factual inquiries set forth in *Graham v. John Deere Co.*, 383 US.1, 148 USPQ 459 (1996).

3. Once again, Applicant argues that there is no suggestion to combine the teachings of the applied art other than the use of Applicant's invention as a template for its own reconstruction, and therefore the rejection for obviousness is improper.

Please see the motivations already set forth in the rejections of record. Additionally, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).